

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

JAMES EVERETT SHELTON,

Plaintiff,

v.

LUMICO LIFE INSURANCE CO.,
and ASSURANCE IQ, LLC,

Defendants.

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Case No. 2:21-cv-03045-JMY

**ASSURANCE IQ, LLC’S MOTION TO STAY
BASED ON PRIMARY JURISDICTION**

Defendant Assurance IQ, LLC (“Assurance”) respectfully moves for an Order staying the Action pursuant to the Primary Jurisdiction Doctrine. The Federal Communications Commission (“FCC”) is currently considering two critical issues—commenced by Assurance via a Petition for Expedited Declaratory Ruling (the “Petition”)—that are likely to prove dispositive of this litigation. The first issue before the FCC is whether Assurance may “reasonably rely” on the consent provided by an individual visiting its website and purporting to be Plaintiff James Everett Shelton (“Plaintiff”). The second issue before the FCC is whether, as Plaintiff alleges, the brief “guide” message played at the outset of the live calls at issue in this case constituted the use of a “prerecorded voice” for purposes of 47 USC § 227(d) and 47 C.F.R. 64.1200(d)(4). Both of these issues are directly relevant to the instant action, and the FCC’s decisions on these issues could prove dispositive. In support of this motion, Assurance files the accompanying Memorandum of Law, which is incorporated fully herein.

WHEREFORE, Assurance respectfully requests that the Court stay this matter to await the FCC's resolution of the Petition.

Date: September 22, 2021

/s/ Daniel E. Brewer

Meredith C. Slawe

Daniel E. Brewer

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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2021, a true copy of the foregoing document was served on all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Daniel E. Brewer

Daniel E. Brewer